

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

TIMOTHY L. KROH,	:	CIVIL ACTION NO. 1:07-CV-0686
Administrator of the Estate of	:	
April M. Erdman.	:	(Judge Conner)
	:	
Plaintiff	:	
	:	
v.	:	
	:	
NORFOLK SOUTHERN RAILWAY	:	
COMPANY and NORFOLK	:	
NORFOLK SOUTHERN	:	
CORPORATION,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 6th day of September, 2007, upon consideration of the report of the magistrate judge (Doc. 23), to which no objections were filed, recommending that the motion to dismiss (Doc. 18) be denied, and, following an independent review of the record, it appearing that neither the speed of defendants' train at the time of the collision nor the class of track upon which it was traveling is a fact of record, and that an operating speed in excess of the maximum speed authorized under the Federal Railroad Safety Act (FRSA) could support a negligence claim, see Stewart v. South Kansas & Oklahoma R.R., 36 F. Supp. 2d 919, 921 (D. Kan. 1999) (denying defendant railroad's motion for a new trial after plaintiff prevailed on negligence per se theory by proving defendant operated its train in excess of FRSA-allowed operating speeds), it is hereby ORDERED that:

1. The report and recommendation of the magistrate judge (Doc. 23) is ADOPTED.
2. Defendants' motion to dismiss (Doc. 18) is DENIED.
3. The above-captioned case is REMANDED to the magistrate judge for further proceedings.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge